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Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1993

In Re

DONALD EDGAR JOHNSON

PLAINTIFF-APPELLANT,

PETITIONER,

V.

Estate Of CARL A. JOHNSON, SR.

DEFENDANT-APPELLEE,

RESPONDENT.

PETITION FOR A WRIT OF PROHIBITION, A WRIT OF MANDAMUS, OR BOTH IN THE ALTERNATIVE, TO MICHIGAN SUPREME COURT CASE NO. 97521

PETITION FOR EXTRAORDINARY WRIT

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73 pp

QUESTION

WHETHER THE STATE COURTS' 1994 FINAL JUDGMENT DISMISSING A $500,000+ ESTATE CLAIM AND CLOSING FIDUCIARY'S $300,000+ ESTATE BASED UPON PREVIOUS 1974-93 STATE COURTS PLUS 1990-92 FEDERAL COURTS JUDGMENTS ALLEGEDLY PROCURED BY FRAUDS UPON THE COURTS AND WITHOUT DUE PROCESS CANNOT BE ENFORCED PENDING ALLEGED U.S. DISTRICT COURT'S FEDERAL QUESTION, FRCVP 60(b)(6), COPYRIGHT, AND CONCURRENT 42 USC §§ 1983,1985 CIVIL RIGHTS CLASS ACTION JURISDICTION OF THE ESTATE, THE STATE, ET AL? U.S. CONST. AMENDS. 1,5,14

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(2) DENYING TIMELY ACCESS OF "INDEPENDENT ACTION #2" BECAUSE IT CONTAINS A CRIMINAL COMPLAINT ON HEELS OF FAILING TO PROSECUTE THE WHITE COLLAR CRIME INVOLVING FEDERAL TAX EVASION, RICO, CONFIDENCE GAME, INTER ALIA;

(3) DENYING A DUE PROCESS-EQUAL PROTECTION EVIDENTIARY HEARING FOR A "MOTION" THEN "INDEPENDENT" RELIEF FROM JUDGMENT (FRAUD UPON COURTS) ACTION #2 WHILE REMOVING TRIAL EVIDENCE FROM THE RECORD;

(4) COMBINING ACTION #1 WITH A TWO YEARS-DELAYED "INDEPENDENT" ACTION #2;

(5) GRANTING CONFLICTING INTERESTS DEFENDANT LAW FIRMS' MOTION FOR RES JUDICATA SUMMARY DISPOSITION OF THE TWO ACTIONS COMBINED INTO ONE;

(6) FAILING TO PROVIDE APPELLATE REVIEW OF THE COMPLETE (INCLUDING REMOVED EVIDENCE) RECORD OF THE TWO ACTIONS COMBINED INTO ONE;

(7) DISMISSING PLAINTIFF-VICTIM'S ESTATE CLAIM AGAINST A PROMINENT CONSPIRATOR AND CLOSING THE ESTATE AFTER ONSET OF VICTIM'S PENDING ACTION IN U.S. DISTRICT COURT WITH ALLEGED FEDERAL

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3. The District Court could have, but wouldn't, properly 28 USC § 2284 convene a 3-judge district court, declare concurrent 42 USC §§ 1983,1985 civil rights class action jurisdiction and 28 USC § 1651(a)-issue a "42 USC §§ 1983,1985-authorized exception to 28 USC § 2283" injunction enjoining Michigan state courts from enforcing said 1989 and 1994 final judgments because the said 1989 judgment is void for want of a due process-equal protection "relief from 1974 judgment" **evidentiary hearing** plus complete (with 1973-82 preponderance of trial court **evidence**) appellate review. And the 1994 judgment is void because is is based upon said 1989 without due process void judgment. . 44

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GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction is authorized by 28 U.S.C. § 1651(a) for this Court's appellate jurisdiction where there is an exceptional circumstance of the State of Michigan's highest court 1994 denying leave to appeal its state court of appeals' 1992 denying leave to appeal a county probate court's 1992 prematurely dismissing a priority $500,000+ estate claim and closing partner's $300,000+ estate -- **pending** joint venturer's U.S. District Court federal question, FRCVP 60(b)(6), copyright, and concurrent 42 USC §§ 1983,1985 civil rights class action jurisdiction over the same estate,

state, et al, for determining if the 1974-86 court judgments (on which the 1986 estate claim is based) were procured without due process by federal defendants' 19<u>64</u>-to-date chain of continuing false pretenses, coercion, frauds, and undue religious-news media influence upon the courts.[n1]

Said 1994 state court final judgment may be found in federal courts to be void and unenforceable because it was based upon previous state and federal court judgments procured by frauds upon the courts and without due process.

[n1] The federal defendant fiduciary, who helped set up the federal tax evasion plus unlawful father and sons agreement at heart of the 1964-to-date conspiracies, is the same ex-roman catholic priest **realtor**, Anthony J. "Tony" Mark, who 1960 helped raid plaintiff's <u>non-catholic</u> family phono records corporation-music publishing company by "divide and conquer" breaking wife from plaintiff and two children. And the Estate's plus its sureties' two law firms (federal defendants) also represent 1964-70 statewide news media plus area's three banks.

Because the Michigan Supreme Court denied reconsideration and the U.S. district court has failed to grant plaintiff's emergency motions for an interlocutory injunction barring dismissal of the priority claim against the defendant estate before the 90-day appeal time runs out, no adequate relief can be obtained in any other form or from any other court. And this Court's discretionary powers are now warranted as an ememergency stop-gap pending federal court decisions. At stake are the **total** substantial assets of claimant-plaintiff-appellant-petitioner and a class of Michigan pro se nonlawyer "totally wiped out" victims of their fiduciaries' (including business partners', law firms', and realtors') Confidence Game-Abuse of Judicial Process conspiracies who were 1964-to-date discriminated against in Michigan courts

-- in violation of constitutional and civil rights -- while lawfully seeking restitution for assets taken unlawfully.

CONSTITUTIONAL PROVISIONS AND REGULATIONS

The state courts' 1994 dismissal of plaintiff-claimant's 1986 estate claim was procured and prolonged by his fiduciaries' 1964-to-date ongoing conspiracy to violate claimant's constitutional, civil, copyright, and parental rights. Const. Amends. 1,5,14; 42 U.S.C. §§ 1983,1985; Federal (not state) Doctrine of Relief From Judgment for frauds upon the courts FRCVP 60(b)(6); Federal (not state) Doctrine of Res Judicata [Allen v McCurry, 449 US 95,101; 101 S Ct 415,418; accord Haring v Prosise, 103 S Ct 2373]; this Court's ruling that a successful litigant -- in this case the Estate -- cannot enforce a state court final judgment

procured without due process. [Simon v Southern R. Co. (1915) 236 US 115, 59 LEd 492, 35 S Ct 255]; and this Court's ruling that states courts cannot have exclusive jurisdiction over claims against decedents' estates in cases where the constitutional requirement as to citizenship is met. [Clark v Bever (1891) 139 US 88, 35 Led __].

STATEMENT OF THE CASE

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(Upper number[00] are reference to 1973-82 trial court evidence plus portions of the record of this 1964-to-date state + federal matter shown in 725-pages Joint Appendix provided U.S. District Court plus the county probate court before its 7/14/92 decision to close the estate).

==========

Pro se nonlawyer claimant-plaintiff-appellant-petitioner was never compensated for his substantial **total** 1922-73-acquired private properties taken for private and public use in Michigan. Or loss of substantial parental rights. He filed a 1973

"contract action #1" against his family fiduciaries who were (as proven by a paper trail of evidence filed in the courts) joint venturers (a) who disguised themselves as "moneylenders" to plaintiff, (b) who solicited plaintiff's investing his total assets in a corporation never formed, (c) who caused substantial private properties to be taken by the State of Michigan for public use with **no** compensation, and (d) who invested a mere $22,658 to plaintiff's total 1922-73-acquired assets worth hundreds of thousands of dollars.[57, 172-175,414] He alleges that Michigan state courts never provided (a) a due process timely or delayed appeal of right of his county trial court "contract action #1" 1974 dismissal judgment, (b) a due process evidentiary hearing for his "motion + independent relief from the 1974 dismissal judgment (on ground

of intrinsic and extrinsic frauds upon the courts) action #2", (c) a due process denial of fiduciaries' (including decedent's) conflicting interests law firms' motions for res judicata summary disposition dismissal judgments (for want of due process full and fair opportunity to litigate claims and issues) of trial court-combined action #1 and #2, and (d) a due process appellate review on the complete (with evidence) record of the (#1 + #2) combined action. And the 1989 final judgment #1 of his combined action (#1 + #2) by the state's highest court is without due process and void. Simon, Supra. And the 1994 final judgment #2 by the state's highest court of his "estate claim action #3" (against 1986-deceased fiduciary) grounded on said final judgment #1 is accordingly without due process, void, and

unenforceable.

Now-Chief Judge Benjamin F. Gibson's appropriate U.S. district court is with FRCVP 60(b)(6) plus concurrent 42 USC §§ 1983,1985 . . . civil rights class action jurisdiction; but has joined Michigan's keeping plaintiff's evidence from a first-ever appellate review and has declined to provide a 28 USC § 2284-convened 3-judge district court for issuing a "42 USC §§ 1983,1985-authorized exception to 28 USC § 2283" interlocutory injunction barring dismissal of plaintiff's priority "estate claim action #3" and closing the estate pending outcome of plaintiff's "civil rights action #4" (in U.S. District Court) against the Estate, the state, et al, conspirators. (Appx. 5a).

The Estate's representative's "news media + bank" conflicting debtor-creditor interests Parmenter O'Toole P.C. law

firm is unqualified for having represented both buyers and sellers of the nightclub on 15-years land contract in said "contract" action and is a federal defendant.

The Estate's two sureties, Heirs Richard and Carl Johnson, and their unqualified "news media + 2 banks" conflicting interests Culver, Lague, & McNally law firm[n2] instigated the improper county probate court 1988 "without full and fair opportunity to litigate" res judicata and 1992 false pretense "federal action is terminated" dismissals -- and all three are federal defendants.

The U.S. District Court Judge Benjamin F. Gibson has not been a 1990-94 due process impartial decisionmaker,

[n2] (a/k/a Culver, Lague, Newman & Irish P.C. a/k/a Culver, Knowlton, Even, And Franks + Lague, Newman, and Irish).

has not disqualified himself, and plaintiff contends that this Court can and should mandate state courts to **not** enforce their 1994 final judgment of the Michigan Supreme Court Case No. 97521 pending the disposition (and possible direct appeal to this Court) of U.S. District Court (WD Mich) Case No. 1:90-CV-175. (Appx pp 2a,5a).

WHEN, WHERE, AND HOW FEDERAL QUESTIONS WERE RAISED

Plaintiff's father and fiduciary died in January, 1986 while he and two of his four sons (no daughters) were being sued by plaintiff for $2,026,000 damages incurred from said 1964-80 phono records-music publishing-nightclub joint venture that was never wound down or incorporated to include plaintiff.[39]

In 1970 when plaintiff refused to take less than 7¢ per dollar of hundred of thousands of dollars invested while

his father and brothers would take 100¢ per dollar of their $22,658 invested in a proposed corporation, his father demanded, "Take what we tell you or nothing!" And nothing is what plaintiff got!

In 1973, plaintiff filed his "contract" action #1 against his fiduciary father and two brothers.

On May 5, 1986, plaintiff filed his "$500,000 to $1,000,000" claim against the Estate:

> "Between June, 1964 and January 14, 1986 in Muskegon County, my father, the deceased, my brother Richard Gordon Johnson, my brother Carl Alfred Johnson, Jr. and their agents took my total substantial worldwide 1952-72 assets under false pretenses, breach of contracts, fraudulent conversion, and libel & slander -- **plus certain Constitutional rights** in the courts where I have nonstop litigated since 1973. See Muskegon Circuit Court #73C-7432 and #86-21207."[29] Plaintiff's 1986 Claim Against The Estate.

Between 1975 and 1994, claimant-plaintiff-appellant-petitioner brought

federal questions to this U.S. Supreme Court several times seeking certiorari and once an extraordinary writ. All were denied without an "on the merits" first-ever appellate review of the complete "with evidence" record. [Only the now-deceased trial court trial judge #1 (there were subsequent replacement trial judge #1 and replacement trial judge #2) has ever reviewed plaintiff's 1973-82 county trial court preponderance of evidence]. No properly-requested due process-equal protection appellate review of the complete (with evidence) record has ever been provided said action #1, #2, (#1 +#2), #3, or #4 by state or federal courts!

ARGUMENT FOR ALLOWANCE OF THE WRIT

I. THE STATE COURTS' 1994 FINAL JUDGMENT DISMISSING A $500,000+ ESTATE CLAIM AND CLOSING FIDUCIARY'S $300,000+ ESTATE BASED UPON PREVIOUS 1974-93 STATE COURTS PLUS 1990-92 FEDERAL COURTS JUDGMENTS ALLEGEDLY PROCURED BY FRAUDS UPON THE COURTS AND WITHOUT DUE PROCESS CANNOT BE ENFORCED PENDING ALLEGED U.S. DISTRICT COURT'S FEDERAL QUESTION, FRCVP 60(b)(6), COPYRIGHT, AND CONCURRENT 42 USC §§ 1983,1985 CIVIL RIGHTS CLASS ACTION JURISDICTION OF THE ESTATE, THE STATE, ET AL. U.S. CONST. AMENDS. 1,5,14.

> "Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const. Amend. 1.
>
> "The right to petition the government for a redress of grievances includes the right of access to the courts; **that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner.** U.S.C.A. Const. Amends. 1, 5." Matter of N.C. Trading Cust. & Pat. App. (1978) 586 F2d 221. (Emphasis added).
>
> "No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.
>
> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Const. Amend. 14.

"No person shall be denied the equal protection of the laws." Michigan 1963 Const. Art. 1 § 2.

Plaintiff kept Michigan Supreme Court Case No. 97521 Johnson v. Johnson Estate informed and the state court 1994 final judgment by that state's highest court was issued while it knew that plaintiff was alleging federal question, FRCVP 60(b)(6), and **concurrent 42 USC §§ 1983, 1985 jurisdiction** over the Estate, the state, et al, in plaintiff's pending U.S. District Court (WD Mich) No. 1:90-CV-175 ongoing 1990 action.

"Every person who, under color of statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected any citizen of the United States * * * to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured by an action at law, suit in equity, or other proper proceedings for redress." 42 USC § 1983.

"If two or more persons * * * go in disguise on the highway or on the premises of another * * * whereby another is injured in his person or property * * * the party so

> injured or deprived may have an action for recovery of damages * * * against any one or more of the conspirators." 42 USCS § 1985(2) (3). (Emphasis added).

The U.S. District Court declined plaintiff's requests to properly 28 USC § 2284 convene a 3-judge district court, declare concurrent 42 USC §§ 1983,1985 civil rights class action jurisdiction, and issue a "42 USC §§ 1983,1985-authorized exception to 28 USC § 2283" injunction enjoining Michigan state courts from enforcing 1989 and 1994 final judgments because the said 1989 judgment is void for want of a due process-equal protection "relief from 1974 dismissal judgment" **evidentiary** hearing plus a complete (with 1973-82 preponderance of trial court **evidence**) appellate review.

> **"Injunction of State Proceedings * * ***
> **§ 5. Deficient state court proceeding**
> * * * [T]he court did state in Montana v United States (1979) 440 US 147, 59 LEd2d 210, 99 S Ct 970; and Allen V McCurry (1980) 449 US 90, 66 LEd2d 308, 101 S Ct

411, that the concept of collateral estoppel cannot apply in a subsequent federal action when the party against whom the earlier decision is asserted did not have a full and fair opportunity to litigate the issue in question in the earlier case. * * *

§ 7. Application where state court judgment is fraudulent or void

The Supreme Court recognized, in the following cases, that a federal court could enjoin, consistent with the prohibition of the predecessor to 28 USCS § 2283, the enforcement of state court judgments which were fraudulently obtained or void for lack of due process.

* * * [T]he court in Simon v Southern R. Co. (1915) 236 US 115, 59 LEd 492, 35 S Ct 255, afirmed a decree of the Court of Appeals affirming a District Court judgment which enjoined the enforcement of the state court judgment. The default judgment in the state court case was void since the defendant had not received notice of the action, the court explained, stating that the plaintiff acquired no rights through the voided default judgment and could be enjoined by a federal court from attempting to enforce what was a judgment in name, but a nullity in fact. * * *

§ 11. Civil rights laws * * *[T]he Supreme Court held or recognized that the Civil Rights Act of 1871 (42 USCS § 1983) falls within the exception to the prohibition, contained in 28 USCS § 2283, of federal court injunctions of state court proceedings. * * * [O]n remand * * * the court recognized that a civil rights action brought under 42 USCS § 1983 fell within an express statutory exception to 28 USCS § 2283, the court reversing a decision by a three-judge District Court in a civil rights class action on the ground that the District Court should have abstained,

under principles of federalism and comity, from entertaining the action and should have dismissed the complaint." Injunction of State Proceedings 66 LEd2d 903. (Emphasis added).

"**Relief from Judgment or Order** * * * .1 Clerical Mistakes * * * .2 Defendant Not Personally Notified. * * * .3 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. * * * (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party * * * or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a **reasonable time**, and for reasons (1), (2), and (3) not more than 1 year after the judgment order or proceeding was entered or taken. * * * This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment * * * **or to set aside a judgment for fraud upon the court.** * * * and the procedure for obtaining any relief from a judgment shall be **by motion** as prescribed in these rules **or by an independent action.**" GCR 1963, 528.3. (Emphasis added).

"A fraud is perpetrated on the court where some material fact is concealed from the court or some material misrepresentation is made to the court: where such a fraud is alleged, the court must conduct an **evidentiary hearing** to determine whether such fraud exists." Valentino v Oakland Sheriff (1984) 134 Mich App 197, 351 NW2d 271, 422 Mich 858. (Emphasis added).[52]

"Record on Appeal. (A) Content of Record. Appeals to the Court of Appeals are heard on the original record. (1) Appeal from

> Court. In an appeal from a lower court, the record consists of the papers filed in that court of a certified copy, the transcript of any testimony or the proceedings in the case appealed, **and the exhibits introduced.**" MCR 7.210. (Emphasis added).

If this U.S. Supreme Court declines to mandate that Michigan state courts **not** enforce its final judgment dismissing plaintiff's 1986 priority claim against his business fiduciary's estate for that fiduciary's share of damages in a never-wound-down joint venture, said fiduciary's estate will exist no longer, its conflicting (debtor-creditor) interests two law firms will terminate the Estate's Appearance in U.S. District Court, and plaintiff's federal case will be devastated from state and federal courts discriminating against pro se nonlawyer victims of fiduciaries' Confidence Game-Abuse of Judicial Process conspiracies that absolutely wipe out the victims of all of their assets,

then block full and fair litigation of issues and claims in both state and federal courts. And the federal defendant State of Michigan would get away with providing **NO** just compensation for plaintiff's private properties 1964-to-date taken under color of state law for public use in violation of Constitution Amendments 5,14.

> "[N]or shall private property be taken for public use without just compensation." Const. Amend. 5.
>
> "The Fifth Amendment's command that private property shall not be taken for public use without just compensation is obligatory on the states." Webb's Fabulous Pharmacies, Inc., et al v Bukwith (1980) 66 LEd2d 938,939.
>
> "A judgment of a state court, even if it be authorized by state statutes, whereby private property is taken for the state or under its direction for public use without compensation made or secured to the owner, is wanting in the due process of law required by the 14th Amendment of the United States Constitution." Chicago B. & Q. R.Co. v Chicago (1897) 41 LEd 979.
>
> "Equity may interfere with a probate order obtained by positive fraud." Kita v Matuzak (1974) 55 Mich App 288.

"Solicitors of stock in a corporation never formed are liable to subscribers for the amount invested." LeZontier v Shock (1977) 78 Mich App 324.

A. STATE COURTS CANNOT AID AND ABET THAT STATE'S FAILING TO PAY JUST COMPENSATION FOR PRIVATE PROPERTIES TAKEN FOR PUBLIC USE BY:

(1) PRETENDING THAT A RESULTED INDIGENT PRO SE NONLAWYER CONFIDENCE GAME VICTIM'S "CONTRACT" ACTION #1 DISMISSAL WAS PROVIDED A DUE PROCESS DELAYED APPEAL OF RIGHT;

(2) DENYING TIMELY ACCESS OF "INDEPENDENT ACTION #2" BECAUSE IT CONTAINS A CRIMINAL COMPLAINT ON HEELS OF FAILING TO PROSECUTE THE WHITE COLLAR CRIME INVOLVING FEDERAL TAX EVASION, RICO, CONFIDENCE GAME, INTER ALIA;

(3) DENYING A DUE PROCESS-EQUAL PROTECTION EVIDENTIARY HEARING FOR A "MOTION" THEN "INDEPENDENT" RELIEF FROM JUDGMENT (FRAUD UPON COURTS) ACTION #2 WHILE REMOVING TRIAL EVIDENCE FROM THE RECORD;

(4) COMBINING ACTION #1 WITH A TWO YEARS-DELAYED "INDEPENDENT" ACTION #2;

(5) GRANTING CONFLICTING INTERESTS DEFENDANT LAW FIRMS' MOTION FOR RES JUDICATA SUMMARY DISPOSITION OF THE TWO ACTIONS COMBINED INTO ONE;

(6) FAILING TO PROVIDE APPELLATE REVIEW OF THE COMPLETE (INCLUDING REMOVED EVIDENCE) RECORD OF THE TWO ACTIONS COMBINED INTO ONE;

(7) DISMISSING PLAINTIFF-VICTIM'S ESTATE CLAIM AGAINST A PROMINENT CONSPIRATOR AND CLOSING THE ESTATE AFTER ONSET OF VICTIM'S PENDING ACTION IN U.S. DISTRICT COURT WITH ALLEGED FEDERAL QUESTION, FRCVP 60(b)(6), AND CONCURRENT 42 USC §§ 1983,1985 CIVIL RIGHTS CLASS ACTION JURISDICTION OVER THE ESTATE; AND

(8) DENYING LEAVE TO APPEAL TO STATE'S HIGHEST COURT. CONST. AMENDS. 1,5,14.

1. The 1974-94 Chain of State Court Judgments Procured WITHOUT Due Process:

12/9/74 Muskegon County Circuit (Trial) Court 73-7432-CK DONALD EDGAR JOHNSON V. CARL ALFRED JOHNSON, SR., et al: 12/9/74 Dismissal Judgment by Trial Court Judge #1 who had been 1965 "bought and programmed" by and for the federal defendant ex-catholic priest realtor and his associates including the county treasurer as if Plaintiff rested his case when he didn't, resided where he didn't, and there was no cause of action when there was:[79,220]

"IT IS ORDERED that defendants' motion be and hereby is granted and Judgment of

No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons set out in the opinion of the Court rendered in open court."

3/19/75 Michigan Court of Appeals 22496, LC 73 C-7432 CK DONALD EDGAR JOHNSON V CARL ALFRED JOHNSON, SR., et al: While broke, living alone, and constantly seeking meaningful employment to raise $5,000 transcript cost and/or qualify for Muskegon public workfare #K6122144A, court of appeals re-denied waiving or suspending cost of transcript:[62,235]

"In this cause an application for rehearing of this Court's previous order denying the furnishing of a transcript to the plaintiff having been filed by plaintiff, and nothing having been filed in opposition thereto, and due consideration thereof having been had by the Court; IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the grounds presented."

9/5/75 State court of appeals 22496: Docket sheet shows no entry of "Appellant's Timely Exparte Motion For Speedy Decisions" when there was a motion properly filed advising plaintiff was on public welfare and entitled to waiver or suspension of transcript cost as in 10/7/81 affidavit/motion.[62,79]

2/5/76 Appeals ct. 22496 Johnson v Johnson, et al, LC, 73 C-7432: Appeal dismissed without prejudice to the filing of application for delayed appeal after full transcripts of proceedings filed in t-r-i-a-l court:[80]

> "[T]his appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the t-r-i-a-l court."

11/15/78 Court of Appeals 22496, LC 73 C-7432 CK, DONALD EDGAR JOHNSON, Plaintiff-Appellant V. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON

and CARL ALFRED JOHNSON, JR., Jointly and severally, Defendants-Appellees; **Robert J. Danhof**, C.J., Presiding Judge, **Michael F. Cavanagh**, and Walter P. Cynar Judges: The state court of appeals chief judge -- (whose Muskegon law firm had 1970+ aided and abetted the post-1964 Confidence Game-Abuse of Judicial Process conspiracies by representing creditor of the venture, then conspiring with the defendant venturers' "news media-2 banks" LANDMAN law firm) -- influenced denial of plaintiff's motions for disqualification of defendants' conflicting interests (buyers and sellers of the jointly-purchased nightclub land) LANDMAN law firm that included attorney CULVER. Participating was the now-Michigan Supreme Court Chief Justice **Cavanagh**:[80,236]

> "In this cause, plaintiff-appellant has filed a motion for stay of this Court's order of dismissal entered on February

> 5, 1976 and a motion for disqualification of counsel for defendants-appellees, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion for stay and the motion for disqualification be and the same are hereby DENIED."

1/22/79-2/11/82 County trial ct. 73-C-7432-CK DONALD EDGAR JOHNSON V. CARL ALFRED JOHNSON, SR., ET AL: Motion to disqualify decedent's LANDMAN law firm including attorney CULVER denied; decedent's LANDMAN law firm including CULVER $25-50,000 federal tax evasion issue not litigated; motions for new trial, amending 1979 findings, certification of non-frivolous appeal DENIED because plaintiff failed to prove that he was ever on a joint venture with defendants when his preponderance of 1974 trial evidence proves that he **did NOT fail to prove that he was on a joint venture with defendants**![80,81,222]

3/31-5/10/82 Trial ct. 73-C7432:

400 Causeway St.,L9
PO Box 5407
Muskegon, MI 49445
July 22, 1994

Clerk, SUPREME COURT
1 First St. NE
Washington, DC 20543

RE: Johnson V Estate of CARL A. JOHNSON, SR. #_____
Michigan Supreme Court #97521

Sir:

Enclosed, please find $300 fee plus forty (40) copies, one signed, of PETITION FOR EXTRAORDINARY WRIT To Michigan Supreme Court, Case No. 97521, for your filing.

Thankyou.

Donald Edgar Johnson
DONALD EDGAR JOHNSON, In Pro Per
Counsel For Petitioner

cc: All persons listed in Certificate of service

Enc: 40 + Cert. of Serv. + $300

D. EDGAR JOHNSON 9-85
400 CAUSEWAY L9 P.O. BOX 5407
NORTH MUSKEGON, MI 49445

1406
74-85/724

7-22 19 94

PAY TO THE ORDER OF U. S. SUPREME COURT $ 300.00

Three Hundred ✓ no/100 ✓ DOLLARS

FMB
Lumbermen's Bank
Main Office
Muskegon, MI 49440

FOR Pet. Extra'y Writ

D Edgar Johnson

:072400868: 2015893 1406

CERTIFICATE OF SERVICE

I, Donald Edgar Johnson, certify that I am Counsel In Pro Per for the above Petitioner, and that on July 22, 1994, I served three (3) copies of the enclosed Petition For Extraordinary Writ on each of the parties required to be served by mailing the copies in duly addressed envelopes with first class postage prepaid at the post office, Muskegon, Michigan, as follows:

On The Clerk, Michigan Supreme Court, Case No. 97521
525 West Ottawa Street
PO Box 30052
Lansing, MI 48909
(517) 373-0116;

On The Estate Of CARL A. JOHNSON, SR.,
c/o Lumberman's Bank a/k/a FMB Lumberman's Bank, Personal Representative,
c/o O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF + O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND P.C. a/k/a PARMENTER O'TOOLE P.C.,
c/o Thomas J. O'Toole, counsel of record for defendant,
175 W. Apple Avenue,
P.O. Box 786,
Muskegon, Michigan 49443
(616) 722-1621;

On Clerk, U.S. District Court, Case No. 1:90-CV-175
452 Federal Bldg.
110 Michigan N.W.
Grand Rapids, Michigan 49503
(616) 456-2381; and

On Michigan Attorney General Frank J. Kelley re 28 USC §2403(b)
525 West Ottawa Street
7th Floor, Law Building
Lansing, MI 48913
(517) 373-1110

On Fred C. Culver, Jr. and Culver, Lague & McNally (a/k/a Culver Lague Newman & Irish P.C. a/k/a Culver Knowlton Even And Franks + Lague Newman and Irish)
400-600 Terrace Plaza
P.O. Box 389
Muskegon, MI 49443
(Phone 616 724-4320)

I certify under penalty of perjury that the foregoing is true and correct. 28 USC § 1746, S.Ct.R. 29.5(c). Executed on July 22, 1994.

Donald Edgar Johnson

DONALD EDGAR JOHNSON, In Pro Per
Counsel For Petitioner
400 Causeway St. - Lot 9
PO Box 5407
Muskegon, MI 49445
Phone: 616 744-1119

Plaintiff's motion for declaratory judgment that he never 1964-70 took full custody of decedent and partners' cash or properties and that their law firms took phono records + music publishing assets under false pretenses DENIED and further access to trial court DENIED because no appellate court would allow further adjudication on merits when it would![81]

11/23/82 "**No Judge**" Decision Appeal ct. **59895,** LC 73-7432 CK: **Court of Appeals** PRETENDING plaintiff was to file the $5,000 full transcript in the court of appeals and NOT the trial court. Leave for application for delayed appeal of 1974 and 1982 judgments DENIED (a) for lack of jurisdiction for plaintiff's failure to comply with 1976 order to file full transcript in **t-r-i-a-l** court when he **did,** and (b) for failure to apply within 18 months of the 1974

judgment when he **did**![82]

> "[P]laintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974, and an order denying relief in the circuit court dated February 11, 1982 * * * IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction in the Court of Appeals, GCR 1963 806.2(5). His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts with **t-h-i-s** court. See order dated February 5, 1976. Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979. Because this application also is outside the 18-month rule of GCR 1963, 806.2(5), it is likewise DENIED for lack of jurisdiction." 11/23/92 State Court of Appeals **WITHOUT** due process judgment.

4/20/83 Michigan Supreme Ct. 71091, COA 59895, LC 73 C-7432CK: Leave to appeal 1974-83 judgments **WITHOUT** due process DENIED:[83]

> "[B]ecause the Court is not persuaded that the questions presented should be reviewed by this court."

5/6/83 Decedent's LANDMAN LUYENDYK LATIMER CLINK & ROBB law firm (including attorney Culver) Extrinsic Fraud Upon County Trial Court **Replacement** Judge #1:170.705,706

> "Dear Judge Pannucci: * * * A review of your Circuit Court file will reveal that the judgment from which Plaintiff Johnson seeks relief was entered many years ago, and the full appellate process has been exhausted. * * * Accordingly, this Court has no further jurisdiction in the matter."

5/10/83 Muskegon Circuit Ct #73-7432-CK DONALD EDGAR JOHNSON, Plaintiff-Appellant, V CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees: County Trial Court Replacement Trial Judge #1 refusal to provide a due process **evidentiary** hearing for "motion" for relief from judgment for fraud upon courts:84,704,705,706,707

> "The court has reconsidered the May 4, 1983 memorandum. * * * The clerk is instructed to return all pleadings and

fees."

6/29/83 Muskegon Circuit Ct #73-7432-CK: County trial court Replacement Trial Judge #2 removed plaintiff's trial evidence from the record:[85]

> "IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff Donald Edgar Johnson, by Friday, July 1, 1983."

11/29/83 court of appeals 50565, LC 73 C-7432 CK: Order mandating that the 1983 "motion" for relief from judgment for frauds upon the courts be extended by an "independent" relief from the 1974 dismissal judgment action:[85]

> "In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983, granting the motion for immediate consideration and denying the application for leave to appeal * * * IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, plaintiff is required to file an independent action, GCR 1963, 528.3."

2/15/84 County trial court 73-C7432-CK DONALD EDGAR JOHNSON, Plaintiff, vs. ANTHONY J. MARK, A/K/A TONY MARK, LANDMAN, LUYENDYK, LATIMER, CLINK & ROBB, A Michigan Partnership, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., CARL ALFRED JOHNSON, A/K/A CARL ALFRED JOHNSON, SR., AND EX-MEMBERS OF LAW FIRM ATTORNEYS FRED C. CULVER, JR., WILLIAM F. McNALLY, WILLIAM M. NEWMAN, THOMAS M. BOVEN, WILLIAM T. KERR, Jointly And Severally, Defendants: County trial court trial judge replacement #2 denial of reasonable access to plaintiff's required "independent" action -- (including complaint of ex-roman catholic priest-fiduciary-realtor's using plaintiff to evade federal tax lien on land) -- for relief from the 1974 dismissal: 86,711

"Felony (criminal) complaints may only be issued by the Prosecuting Attorney. (Not D. Johnson). 2-15-84 M. Kobza."

2/4/86 Michigan Court of Appeals 88008 DONALD EDGAR JOHNSON, Plaintiff, v. MUSKEGON CIRCUIT JUDGE, CARL ALFRED JOHNSON, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., LANDMAN LATIMER CLINK & ROBB law firm partnership, and WILLIAM F. MCNALLY, Defendants:[87]

"[T]he complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented. * * * [T]he Muskegon County Circuit Court shall allow plaintiff to file an independent action based upon alleged fraud upon the Court. MCR 2.612(C)(3)..."

5/7/86 County Trial Court **73-C7432-CK PLUS 86-21207-CZ** DONALD EDGAR JOHNSON, Plaintiff, v RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR. and **ESTATE OF CARL A. JOHNSON, SR.**, Jointly and Severally, Defendants: Trial judge replacement #2 re-refused a due process-equal protection **evidentiary** hearing, combined the 1973 "contract

+ motion for relief" action with 1986 "independent relief from judgment" action to form one action, and **erroneously** declared case had ended in 1976:[88,225,716]

> "This Court is by this document ordering a **consolidation** of this file with the earlier filed case. * * * This litigation has been terminated for at least 12 years. * * * This case is at an end."

6/20/86 County trial court 86-21207-CZ DONALD EDGAR JOHNSON, Plaintiff, v RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR. and **ESTATE OF CARL A. JOHNSON, SR.**, Jointly and Severally, Defendants: Trial Court Replacement Judge #2 Granted Estate's conflicting interests O'Toole law firm's plus conflicting interests Culver law firm's motion for res judicata summary disposition dismissal judgment of plaintiff's two actions (1973 "contract + motion for relief" 73-C7432 combined with 1986 "relief" 86-21207) -- neither

of which had a due process "relief from judgment" **evidentiary hearing** full and fair opportunity to litigate claims and issues required by federal, not state, res judicata law:[88,229] (See Detroit Police Officer Ass'n v Young, Infra):

> "Defendants having filed their motion for disposition of all of plaintiff's claims for failure to state any claim upon which relief can be granted pursuant to MCR 2.116(C)(8) * * * IT IS FURTHER ORDERED * * * that plaintiff's claims be dismissed with full prejudice * * * in these consolidated matters."

3/3/88 Court of Appeals 92822 DONALD EDGAR JOHNSON, Plaintiff-Appellant v RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appelles: Court of Appeals violated its own due process MCR 7.210 by failing to provide a complete (with evidence) appellate review and PRETENDING that the 6/20/86 trial court decision was with due process

of an evidentiary hearing for determining if the 1974 judgment was procured and prolonged by frauds upon the courts.[90]

> "[S]ummary disposition was proper. * * * Affirmed."

4/25/88 County Probate Court 86-59607 Re ESTATE of Carl A. Johnson, Sr., Deceased: County probate court PRETENDING claim was for $1,000,000 too much and dismissing it on ground of previous judgments WITHOUT due process:[92]

> "IT IS ORDERED that the claim filed against said estate by Donald E. Johnson, in the total sum of $1,500,000, is hereby dismissed pursuant to Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988..."

2/2/89 Michigan Supreme Court 83419, COA 92822, LC **86-21207-CZ** DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., Defendants-Appellees: 2/2, 3/29, 4/14/89 Mich. Supreme Ct. declined tc

correct trial court and court of appeals' **PRETENDING** due process for both **73-C7432 and 86-21207 combined:**[93,274,275]

> "[A]pplication for leave to appeal is considered and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

7/7/89 Court of Appeals 108452 In the Matter of the Estate of CARL A. JOHNSON, SR., deceased: Court of Appeals affirmed county probate court's 4/25/88 granting conflicting interests Estate's law firms' motion for res judicata dismissal based upon previous judgments WITHOUT due process.[257]

> "Claimant Donald Johnson apeals as of right from an April 25, 1988, Muskegon Probate Court order * * * There are **t-h-r-e-e** prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action; and (3) both actions must be between the same parties or their privies. * * * The court dismissed claimant's claim **on the basis of res judicata** after finding that claimant had not presented anything other than his claims which had previously been

litigated. The lower court did not err in dismissing claimant's claim. * * * **Res judicata** barred claimant from relitigating his claim that the estate's counsel should be disqualified. The lower court did not err. * * * Affirmed."

[["Before the collateral estoppel may be applied to preclude further judicial review of an issue, **four** basic criteria must be met: * * * (4) the party against whom estoppel is sought **must have had a full and fair opportunity to litigate the issue in the prior proceeding.**" Detroit Police Officer Ass'n v Young (1987 CA6 Mich) 824 F2d 512,515.]]

11/29/89 Michigan Supreme Court 87252, COA 108452, LC 86-59607-SE In Re Estate Of CARL A. JOHNSON, SR., Deceased: Mich. Supreme Ct. declined to correct county probate court and court of appeals PRETENDING due process:[276]

"[A]pplication for leave to appeal is considered and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

7/14/92 County probate court 86-59607-SE, ESTATE OF CARL A. JOHNSON, SR., DECEASED: County probate court blocked due process litigation and **prematurely** closed estate **pending** District Court's

concurrent 42 USC § 1985 civil rights class action jurisdiction: (See Appendix p 3a herein).

> "The Respondents'[n3] motion to dismiss is granted * * *Petitioner (claimant-plaintiff) is enjoined from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No 73-7432-CK or the judgment entered in the United States District Court, Western District of Michigan, Southern Division, in File No. 1:90-CV175 * * * **this estate is closed.**"

10/14/92 County circuit (trial) court 92-29070-AV DONALD EDGAR JOHNSON, Claimant-10% Heir-Appellant V. the estate of Carl A. Johnson,Sr., Defendant-Appellant: County trial court declined jurisdiction to "Claimant-10% Heir-Appellant" claim of appeal from 7/14/92 county probate court Order by same trial judge **replacement-#1** who accepted LANDMAN law firm's fraud on court, **then denied**

n3 [CULVER LAGUE & McNALLY law firm including Fred C. Culver, Jr. (derivative of said LANDMAN conflicting interests law firm which helped wipe out plaintiff and whose 5/6/83 fraud prevented a due process evidentiary hearing)].

scheduled 5/13/83 **evidentiary hearing** for "motion" for relief from judgment (frauds upon courts):[114,170.705] (Appendix p 4a).

"[C]laim of appeal is DENIED."

10/19/92 Muskegon County Circuit Ct. #92-29070-AV DONALD EDGAR JOHNSON, Claimant-10% Heir-Appellant V. THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellee: (Appx p 4a)

> "After having considered Mr. Johnson's Motion For Reconsideration, the same is hereby DENIED since no acceptable legal reasons have been presented for the Court to change its opinion. Motion for Reconsideration is DENIED."

12/21/92 Michigan Court of Appeals. Docket No. 158359. Lower Court No. 92 029070 AV Donald Edgar Johnson v Estate of Carl A. Johnson, Sr.: (Appx p 5a).

> "The motion to file a brief in support of the application for leave to appeal exceeding the 50-page brief limitation is DENIED. Plaintiff-appellant shall file a brief that does not exceed 50 pages within 21 days of the certification of this order. The brief which was filed is returned with this order."

5/27/93 Michigan court of appeals 158359, LC 92-29070-AV, Donald Edgar Johnson v. Estate of Carl A. Johnson, Sr.: Michigan court of appeals PRETENDING insufficient copies of brief not exceeding 50 pages. (Appx p 5a).

> "The application for leave to appeal is DENIED for lack of merit (Appellant was unable to acquire exact copies tho timely ordered)."

8/11/93 Michigan court of appeals 158359, LC 92-29070-AV, Donald Edgar Johnson v. Estate of Carl A. Johnson, Sr.: Michigan court of appeals PRETENDING plaintiff-appellant failed to comply. (Appx p 5a).

> "The court orders that the motion for rehearing, motion to disqualify, and motion to hand over copies of evidence are DENIED (Appellant was unable to acquired exact copies tho timely ordered)."

2/25/94 Michigan Supreme Ct. DONALD EDGAR JOHNSON, Plaintiff-Appellant, V. ESTATE OF CARL A. JOHNSON SR., Defendant-Appellee. SC 97521, COA

158359, LC 92-29070-AV: Mich. Supreme Ct. Order denying leave to appeal lower courts' judgments WITHOUT due process: (Appx p 1a).

> "On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question should be reviewed by this Court."

4/29/94 Michigan Supreme Ct. DONALD EDGAR JOHNSON, Plaintiff-Appellant, V. ESTATE OF CARL A. JOHNSON SR., Defendant-Appellee. SC 97521, COA 158359, LC 92-29070-AV: 4/29/94 Mich. Supreme Ct. DENIAL of reconsideration: (Appx p 2a).

> "On order of the Court, the motion for reconsideration of this Court's order of February 25, 1994, is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

B. STATE COURTS' ENFORCEMENT OF THE 1994 FINAL JUDGMENT DISMISSING THE 1986 PRIORITY ESTATE CLAIM AGAINST THE DECEASED FIDUCIARY MUST AWAIT THE U.S. DISTRICT COURT'S PROVIDING A FRCVP 60(b)(6) EVIDENTIARY HEARING FOR DETERMINING IF THE PREVIOUS 2/2-4/14/89 STATE COURT FINAL JUDGMENT (OF ACTION #1 + #2 COMBINED, ON WHICH THE CLAIM IS BASED) WAS WITHOUT DUE PROCESS, IS VOID, AND IS UNENFORCEABLE.

"§ 7. * * * [T]he court in Simon v Southern R. Co. (1915) 236 US 115, 59 LEd 492, 35 S Ct 255, affirmed a decree of the Court of Appeals affirming a District Court judgment which enjoined the enforcement of the state court judgment. * * * [T]he Simon Case was a case of enjoining a successful litigant from enforcing a final judgment of a state court, **held void because it was procured without due process.** * * * [O]bservance by the federal courts * * * involved no impairment of the substance of constitutional right. Injunction of State Proceedings 66 LEd2d 903. (Emphasis added).

"Assuming substantiality of the federal issues, there is power in federal courts to hear the whole." United Mine Workers v Gibbs (1966 US) 386 US 715, 16 LEd2d 218,86 S Ct 1130.

"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical Ass'n v U.S. Dept. of Justice, Antitrust Div'n (1971 DC Mich) 344 F Supp 9, affm'd 467 F2d 1290.

"State courts exercise concurrent jurisdiction with federal district courts over cases arising under both sections of Civil Rights Act providing for civil action for deprivation of rights and section of Civil Rights Act relating to conspiracy to interfere with civil rights. 42 USCA § 1983,1985." Bennum v Board of Governors of Rutgers, ETC. (1976 DC NY) 413 F Supp 1274,1279, 12 BNA PEP Cas 1393, 123 CCH EPD ¶ 10981.

1. The 1975-93 U.S. Supreme Court "Not On The Evidence Or Merits" Denials Of Certiorari And Petition For Extraordinary Writ Can Be Vacated Or Set Aside By A U.S. District Court FRCVP 60(b)(6) Evidentiary Hearing That Determines There Was Fiduciaries' Ongoing Confidence Game-Abuse Of Judicial Process Conspiracies Including A 1964-To-Date Chain Of Continuing False Pretenses, Coercion, Frauds, And Undue Religious-News Media Influence Upon The Courts That Violated Plaintiff's Constitutional, Civil, Copyright, And Parental Rights. U.S. Const. Amends. 1,5,14.; 42 USC §§ 1983,1985; FRCVP 60(b)(6).

> "**Mistakes** * * * **Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (6) any other reason justifying relief from the operation of the judgment. The **motion** shall be made **within a reasonable time** * * * This rule **does not limit the power of a court to** * * * **set aside a judgment for fraud upon the court.** * * * the procedure for obtaining any relief from a judgment shall be **by motion** as prescribed in these rules or by an independent action." Fed.R.Civ.P. 60(b)(6). (Emphasis added).

> "In all averments of fraud or mistake, the circucumstances constituting fraud or mistake shall be stated with particularity." FRCVP 9(b).

"Rule 9(b) applies where fraud lies at core of action, as in action alleging conspiracy to defraud or conceal." Hayduk v Lanna (1985 CA1 Mass) 775 F2d 441.

"District Court may entertain and act upon Rule 60(b)(6) motion for relief from judgment of dismissal which was affirmed on appeal without first obtaining appellate leave." Nunnery v Barber (1977 CA4 W Va) 25 FR Serv 3d 856.

"A court of equity may grant relief against a judgment because of after-discovered fraud, regardless of the term of its entry." Hazel-Atlas Glass Co. v Hartford-Empire Co. (1944) 322 US 238, 88 LEd 1250, 164 S Ct 997.

2. This Court Can Mandate That The Michigan County Trial And Probate Courts Transfer All Of Claimant-Plaintiff - Appellant's 1973-89 "Contract" Action's Remaining Preponderance Of Evidence (Not Already Filed In District Court) To The U.S. District Court (WD Mich) No. 1:90-CV-175 To Help Provide A First-Ever Due Process Complete (With Evidence) **Appellate Review** in District Court.

"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical Ass'n, Supra.

"A full and fair hearing means that 'where there are facts in dispute, full and fair consideration requires consideration by the fact-finding court, and at least the availability of **meaningful appellate review by a higher state court.**" O'Berry v Wainwright, 546 F2d 1204,1213 (5th Cir) (emphasis in original), cert denied, 433 US 911, 97 S Ct 2981, 53 LEd2d 1096 (1977). Davis v Blackburn (1986 5th Cir) 803 F2d 807,808.

"A prior state court judgment would not preclude the federal courts from acting where the state courts were unable or unwilling to protect federal rights." Fellowship of Christ Church v Thorburn (1985 CA6 Mich) 758 F2d 1140,1144.

3. The District Court could have, but wouldn't, properly 28 USC § 2284 convene a 3-judge district court, declare concurrent 42 USC §§ 1983,1985 civil rights class action jurisdiction and 28 USC § 1651(a)-issue a "42 USC §§ 1983,1985-authorized exception to 28 USC § 2283" injunction enjoining Michigan state courts from enforcing said 1989 and 1994 final judgments because the said 1989 judgment is void for want of a due process-equal protection "relief from 1974 judgment" **evidentiary hearing** plus complete (with 1973-82 preponderance of trial court **evidence**) appellate review. And the 1994 judgment is void because is is based upon said 1989 without due process void judgment.

"A district court of three judges shall be convened when otherwise required by Act of Congress." 28 USC § 2284.

In U.S. District Court, plaintiff challenged statute of statewide applicability, sought to restrain an officer of state, sought injunctive relief, and showed how there is substantial question as to validity of statute under Federal Constitution:

> **"THIS DISTRICT COURT CAN 28 USC § 2284 PROPERLY CONVENE A 3-JUDGE DISTRICT COURT FOR ISSUING A '42 USC §§ 1983,1985-AUTHORIZED EXCEPTION TO 28 USC § 2283' INJUNCTION ENJOINING MICHIGAN STATE COURTS FROM ENFORCING THESE 1989 AND 1994 FINAL JUDGMENTS.**
>
> 'Statute relating to the convening of a three-judge court in suit to restrain enforcement of state statute is not applicable **unless** statute of statewide applicability is challenged, an officer of state is sought to be restrained, injunctive relief is sought, and there is substantial question as to validity of statute under Federal Constitution. 28 USCA § 2281' Holt Civic Club v City of Tuscaloosa (1975 CA Ala) 525 F2d 653.
>
> **'Relief From Judgment** * * * (C) Grounds for Relief From Judgment. * * * (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final

judgment, order, or proceedings on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. * * *

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a),(b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation. (3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendasnt not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.' MCR 2.612(C)(1)(a)(b)(c) (2)(3).

Unlike FRCVP 60(b)(6), pet'n for extraordinary writ p 9 the rule/statute coddles an adverse party's fraud (intrinsic or extrinsic), misrepresentation, or other misconduct.

'The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a),(b), and (c), within one year after the judgment, order, or proceedings was entered or taken.' MCR 2.612(C)(2). (Emphasis added).

The rule does not read, '... (C)(2) The motion **with evidentiary hearing** * * * (3) * * * entertain an independent **with evidentiary hearing** action.'

1. The State's **Three** Prerequisites[258] To The Application Of The Res Judicata Doctrine Are Without U.S. Supreme Court Due Process For Want Of A **Fourth:** The Party Against Whom Estoppel Is Sought Must Have Had A Full And Fair Opportunity To Litigate The Issue In The Prior Proceeding.

See 'Danhof' court of appeals 7/7/89 Judgment[258] versus Pet'n For Extraordinary Writ p 25.

B. AN OFFICER OF THE STATE IS SOUGHT TO BE RESTRAINED.

Michigan Court of Appeals Chief Judge Robert J. Danhof and Supreme Court Chief Justice Michael F. Cavanagh are sought to be restrained. See 5th Amended Complaint p 11 plus Pet'n For Extraordinary Writ p 66.

C. INTERLOCUTORY INJUNCTIVE RELIEF IS SOUGHT.

See plaintiff's 6/29/94 motion for leave, declaratory, and injunctive relief.

D. THERE IS SUBSTANTIAL QUESTION AS TO VALIDITY OF STATUTE UNDER FEDERAL CONSTTTUTION.

The MCR 2.612 statute/rule plus appellate court deficient **three** prerequisites rather than **four** for res judicata allowed:

(1) trial court issuing a judgment of "no cause for action", denying a motion within one year of 1982 new evidence presentation for due process-equal protection evidentiary hearing for determining if intrinsic and extrinsic frauds existed;

(2) trial court fraudulently opining that litigation was terminated before 10-12 years of interlocutory proceedings in trial plus appellate courts;

(3) trial court fraudulently denying pro se nonlawyer resulted bona fide indigent victim-plaintiff the materials necessary for a timely or reasonably-delayed appeal of right within one year of judgment plus an evidentiary hearing to prove the discrimination, deprivation of, and interfering with constitutional, civil, and parental rights;

(4) trial court removing plaintiff's pre-judgment plus post-judgment trial court evidence from the record during interlocutory appeal of denial of evidentiary hearing for 'motion portion' of his relief of judgment action.

(5) trial court denying a due process-equal protection evidentiary hearing for a plaintiff's motion within one year of trial court's over one year delaying a statement of facts plus materials necessary for a timely or reasonably-delayed appeal of right while accepting evidence and, in essence, amending its judgment;

(6) trial court hiding or removing the trial court trial + post-trial evidence from the record during interlocutory appeal;

(7) trial court denying a due process-equal protection evidentiary hearing for an independent relief from judgment action over one year after the judgment;

(8) trial court combining the original action, the 'motion (with evidence in the record) for relief from judgment' plus 'independent' (without evidence in the record) relief from judgment action then re-redenying an evidentiary hearing to determine if frauds existed, and granting a res judicata summary dismissal judgment **WITHOUT** due process-equal protection trial court evidentiary hearing or appellate review on the complete (with evidence) record.

(9) trial court's denying for over one year an appeal of right of a judgment by defendants' intrinsic plus extrinsic fraud upon the courts that plaintiff was not a bona fide indigent; and

(10) trial court's denying a MCR 2.612(C) motion within one year of trial court's amending its judgment for due process-equal protection evidentiary hearing and removing evidence from the record, then prohibiting return of that evidence to the record for an evidentiary hearing to help prove intrinsic plus extrinsic frauds.

See 6/29/94 5th Supplement p 2 for authorities." 7/6/94 6th Supplement in District Court 1:90-CV-175.

> **§ 11. Civil rights laws** * * * [T]he Supreme Court held or recognized that the Civil Rights Act of 1871 (42 USCS § 1983) falls within the exception to the prohibition, contained in 28 USCS § 2283, of federal court injunctions of state court proceedings. * * * [O]n remaand * * * the court recognized that a civil rights action brought under 42 USCS § 1983 fell within an express statutory exception to 28 USCS § 2283, the court reversing a decision by a **three-judge District Court** in a civil rights **class action** on the ground that the District Court should have abstained, under principles of federalism and comity, from entertaining the action and should have dismissed the complaint." Injunction of State Proceedings 66 LEd2d 903. (Emphasis added).

4. The Respondent Estate's Attorney, Thomas J. O'Toole, Drafted The **Unlawful Agreement**-Perpetration And Continues To Perpetuate Decedent's Participation In The 1964-To-Date Confidence Game-Abuse Of Judicial Process Conspiracies Against The Petitioner. 530,540

The evidence shows the decedent was a joint venturer disguised as a moneylender by the Estate's and its Sureties' two law firms which represented both buyers and sellers of the nightclub in Confidence Game-Abuse of Judicial Process ongoing conspiracies directed

by an ex-catholic priest and realtor.

> "It is understood that (nightclub) sellers in entering into this agreement look solely to Donald E. Johnson for its performance and that any other persons who may be lending financial support are expreswsly understood not to be partners or engaged in any enterprise or joint venture with Donald E. Johnson by reason thereof." Ex-Priest Realtor Mark-Directed, Attorney O'toole-Amended, and Parmenter O'Toole P.C. law firm-Drafted, Appendix To 12/22/64 Sales Agreement.[523-544]

> "ATTORNEY O'TOOLE - ORIGINAL OPTION COMPOSITION CHARGE . . $45.00. * * * Anthony J. Mark, Assoc. Broker. /s/Donald E. Johnson." Realtor's "Purchaser's Statement.[540]

> "The gist of the crime of conspiracy is the **unlawful agreement**." Roll v People (1955 Colo) 284 P2d 665.

Federal defendants tricked or deceived Petitioner into believing that he would be provided fair equity in the incorporation of the venture; but that never happened.

"'Confidence Game' is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v Carr 543 P2d 441,443, 112 Ariz 453.

5. The Decedent 1964-86 Participated In A Criminal Conspiracy Against Petitioner And His Estate Is 1986-To-Date Participating.

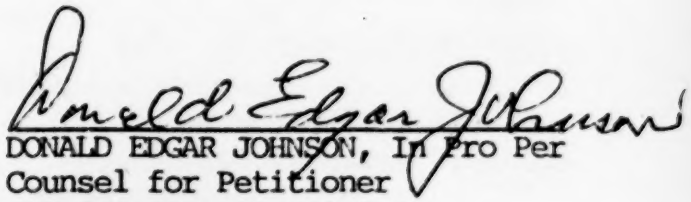
"That the wrongdoer gets the property in two steps rather than one where a partnership with his victim is formed should not absolve him of the crime of obtaining money or property by false pretenses where the false pretenses continued to operate up to the moment of his wrongful appropriation of the partnership assets contributed by his victim." People v Jones (1950) 224 P2d 353,357.[52]

For the reasons set forth above, 28 U.S.C. § 2403(b) may be applicable, and an extraordinary writ should issue ordering that the February 25, 1994 final judgment of the Michigan Supreme Court, Case No. 97521, be stayed pending final disposition of U.S. District Court (WD Mich), case No. 1:90-CV-175.*

CERTIFICATE

I am the Petitioner in pro per herein

and hereby certify under penalty of perjury that the foregoing is true and correct. Executed on July 22, 1994.



DONALD EDGAR JOHNSON, In Pro Per
Counsel for Petitioner
400 Causeway St., Lot 9
P.O. Box 5407
Muskegon, MI 49445
(Phone 616 744-1119)

*The Court may elect to also mandate that the Michigan Supreme Court 97521 order that all remaining Plaintiff-Claimant-Appellant Donald Edgar Johnson exhibits in the Muskegon County Circuit and Probate Courts (files 73-C7432-CK, 86-21207-CZ, 86-59607-SE, and 92-29070-AV) be delivered to the U.S. District Court (WD SD Mich) file 1:90-CV-175 forthwith for helping that court provide a longtime sought first-ever due process complete (with evidence) appellate review.

PETITIONER'S APPENDIX

I. The Michigan Supreme Court Order And Opinion Sought To Be Reviewed:

"Michigan Supreme Court
Lansing, Michigan

Order
Entered February 25, 1994

Michael F. Cavanagh
Chief Justice

97521

Charles L. Levin
Jameds H. Brickley
Patricia J. Boyle
Dorothy Comstock Riley
Robert P. Griffin
Conrad L. Mallett, Jr.
Associate Justices

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 97521
V
COA: 158359
LC: 92-29070-AV

Estate of CARL A. JOHNSON, SR.,
Defendant-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. Davis, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

20222 SEAL
February 25, 1994 /s/ Corbin R. Davis,Clerk"

II. The Order Of the **Related** U.S. District Court **Companion** Case, ENTERED **1/5/94**:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED: 94 JAN-4

DONALD EDGAR JOHNSON,

Plaintiff,

File No. 1:90-175
Hon. Benjamin F.Gibson

V.

RICHARD GORDON JOHNSON, et al.,

MEMORANDUM OPINION and INJUNCTIVE ORDER

Defendants
_____/

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 3rd day of January 1994. PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE * * *IT IS FURTHER ORDERED that plaintiff DONALD EDGAR JOHNSON shall refrain from filing * * * (**except** for * * * any filing as to which the plaintiff first obtains leave from a United States Magistrate, which leave shall be granted if the accompanying request is not frivolous or made in bad faith).../s/ Benjamin F. Gibson, U.S. DISTRICT JUDGE."

III. The Michigan Supreme Court Order Denying Reconsideration of Its 2/25/94 Order:

"4/29/94 Michigan Supreme Ct. DONALD EDGAR JOHNSON, Plaintiff-Appellant, V. ESTATE OF CARL A. JOHNSON SR., Defendant-Appellee. SC: 97521, COA: 158359, LC: 92-29070 AV: On order of the Court, the motion for reconsideration of this Court's order of

February 25, 1994, is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

IV. The 1992-93 County Probate, County Circuit (Trial), And State Court of Appeals Orders:

7/14/92 Muskegon County Probate Ct. ESTATE OF CARL A. JOHNSON, SR., DECEASED. Case No. 86-59607-SE: "Donald Edgar Johnson, a pro se Michigan citizen, has filed a petition to determine (1) that law firms are unqualified, and (2) that decedent was joint venturer disguised as moneylender. In response, the Respondents, Culver, Lague & McNally and Fred C. Culver, Jr., have filed a motion for summary disposition in accordance with Rule 2.116. The Court hereby orders:

1. That the Respondents' motion to dismiss is granted, and the Petitioner's petition is hereby dismissed with prejudice.

2. IT IS FURTHER ORDERED that the Clerk of the State of Michigan Probate Court for Muskegon County is enjoined from accepting from the Petitioner any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File NO. 73-7432-CK or those Orders entered by the United States District Court, Western District of Michigan, Southern Division, in File No. 1:90-CV-175.

3. IT IS FURTHER ORDERED that the Petitioner is enjoined from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK or the judgment entered in the United States District Court, Western District of Michigan, Southern Division, in File No. 1:90-CV-175. Failure to comply with this Order on the part of the Petitioner may result in a finding that he is in contempt of this Court.

THEREFORE, IT IS HEREBY ORDERED, that this estate is closed."

10/14/92 Muskegon County Circuit Ct. DONALD EDGAR JOHNSON, Claimant-10% Heir-Appellant V. THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellee # 92-29070-AV:

"Plaintiff seeks judicial review of the Order entered July 14, 1992 in the Muskegon County Probate Court, Honorable Tom H. Linck presiding. In that Order the Court 1) granted summary disposition to the Respondents, Culver, Lague & McNally and Fred C. Culver, Jr., 2) enjoined the Clerk of the Probate Court to accept from the Plaintiff 'any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK or those Orders entered by the United States District Court, Western District of Michigan, Southern Division, in File No. 1:90-CV-175;' 3) enjoined the Petitioner from filing any pleadings or documents seeking to collaterally attack the above judgments; and 4) closed the Estate of Carl A. Johnson, Sr.

Final decisions of the Probate Court are appealable to the Michigan Court of Appeals, MCLA 600.861, and not the Circuit Court. In re Swanson Estate, 98 Mich App 347. '[T]he determination of which probate court orders are 'final' and which are not for purposes of determining appellate jurisdiction of this Court will have to be made on a case-by-case basis.' Swanson at 350.

The Order which Plaintiff asks this Court to review is a final order and the Court lacks jurisdiction in this matter. Plaintiff's claim of appeal is DENIED. IT IS SO ORDERED."

10/19/92 Muskegon County Circuit Ct. DONALD EDGAR JOHNSON, Claimant-10% Heir-Appellant Vs. THE ESTATE OF CARL A. JOHNSON, SR., Defendant-Appellee # 92-29070-AV:

"After having considered Mr. Johnson's Motion For Reconsideration, the same is hereby DENIED since no acceptable legal reasons have been presented for the Court to change its opinion. Motion for Reconsideration is DENIED."

12/21/92 Michigan Court of Appeals. Donald Edgar Johnson v Estate of Carl A. Johnson, Sr. Docket No. 158359. Lower Court No. 92 029070 AV:

"The motion to file a brief in support of the application for leave to appeal exceeding the 50-page brief limitation is DENIED. Plaintiff-appellant shall file a brief that does not exceed 50 pages within 21 days of the certification of this order. The brief which was filed is returned with this order.
5/27/93 The application for leave to appeal is DENIED for lack of merit.*
8/11/93 The Court orders that the motion for rehearing, motion to disqualify, and motion to hand over copies of evidence are DENIED.*

*Appellant was unable to acquire exact copies tho timely ordered."

V. The Caption Of Plaintiff's 88-pages 13-Count 1/27/94-filed Complaint Being Reviewed By U.S. District Court No. 1:90-CV-175 Supported By 3/11/92-Filed 725-Pages Joint Appendix of 1973-82 County Trial Court Evidence, Etc., Filed In 1990 THAT WAS NEVER PROVIDED AN APPELLATE REVIEW:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CASE NO. 1:90-CV-175
RELATED: Michigan Supreme Ct. #97521

DONALD EDGAR JOHNSON, CLASS OF PRO SE NONLAWYER VICTIMS OF FIDUCIARIES' CONFIDENCE GAME-ABUSE OF JUDICIAL PROCESS CONSPIRACIES, UNITED STATES, AND AMERICAN FEDERATION OF MUSICIANS OF THE U.S. AND CANADA,

HON. BENJAMIN F. GIBSON

Plaintiffs,

V.

CLASS ACTION
5TH AMENDED COMPLAINT

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., THE CARL A. JOHNSON, SR. ESTATE, ANTHONY J. "TONY" MARK, THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, LANDMAN LATIMER CLINK & ROBB P.C., CULVER LAGUE & McNALLY, CULVER LAGUE NEWMAN & IRISH P.C., CULVER KNOWLTON EVEN AND FRANKS, LAGUE NEWMAN AND IRISH, PARMENTER O'TOOLE P.C., THE STATE OF MICHIGAN, Jointly And Severally; UNC JOHNSON TECHNOLOGY INC.; PORT CITY MACHINE & TOOL CO.; MICH. COURT OF APPEALS EX-CHIEF JUDGE ROBERT J. DANHOF; MICHIGAN DEPT. OF COMMERCE; ATTY. MARION L. BRADBURY, JR.; ATTY. V.S. LAURIN, JR. ESTATE; ATTY. WILLIAM P. SPANIOLA; JUDGE CHARLES A. LARNARD, JR. ESTATE; ATTY. CHARLES A. LARNARD ESTATE; ATTY. WILLIAM J. HIPKISS; GILLARD & GILLARD LAW FIRM; ATTY. JOHN B. OLSEN; MICHIGAN LIQUOR INSPECTOR DONALD HULANDER; FENTON "BUD" KELLEY; WILLIAM F. KRAUSE; JAY CORP.; CAL/CARL CORP.; SUN AGENCY, INC.; JOETHE BUILDERS INC.; ATTY. G. THOMAS JOHNSON; And PERSONS UNKNOWN.

Defendants.

Three-Judge District Court Requested"

VI. 28 USC § 1651:

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 USC § 1651.

VII. 28 USC § 2403(b):

"In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

VIII. GCR 1963, 806.2(5):

".2 Appeal by Leave. * * * (5) If an application [under either subrule 806.4(1) or (2)] in a civil case is filed more than 18 months after entry of the order or judgment appealed from, leave to appeal may not be granted." GCR 1963, 806.2(5).

IX. GCR 1963, 806.4(2):

"**Appeals by Right and by Leave.** * * * .4 Delayed Appeal * * * (2) Where timely appeal would have been of right, application for delayed appeal need not be accompanied by settled statement of facts but shall affirmatively show, by statement of facts and brief, that there is merit in the claim of appeal and, by affidavit of facts, that the delay was not due to appellant's culpable negligence. The application shall be noticed for hearing as motion. Any other party may file opposing statement, brief and affidavits." GCR 1963, 806.4(2).

X. MCLA 600.861:

"**Appeals to court of appeals** Sec. 861. A party to a proceedinng in the probate court may appeal the following orders as a matter of right to the court of appeals: (a) A final order affecting the rights or interests of any interested person in an estate or trust." MCLA 600.861.

XI. MCR 2.116(C)(8)(10):

"**SUMMARY DISPOSITION** * * * (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based: * * * (8) The opposing party has failed to state a claim on which relief can be granted. * * * (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(8)(10).

XII. MCR 2.611(B):

> "A motion for a new trial made under this rule or a motion to alter or amend a judgment must be filed and served within 21 days after entry of the judgment." MCR 2.611(B).

XIII. MCR 7.210(H).

> "When the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the recoird on appeal in the case pending on appeal." MCR 7.210(H).